IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Mat.Appeal.No. 357 of 2005()

OPHMA.699/2005 of FAMILY COURT, ALAPPUZHA
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PETITIONER: APPELLANT/PETITIONER

SHRI KUMAR.V.UNNITHAN,
S/O.VIJAYAN UNNITHAN,
AGED 27 YEARS, F2B, 5TH FLOOR,
PACHARATHARA APPARTMENTS, OPPOSITE OF TOCH SCHOOL,
JANATHA ROAD, VYTTILA.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.P.CHANDRASEKHAR

RESPONDENTS:

MANJU K.NAIR, D/O.KUTTAN NAIR,
AGED 26 YEARS, ANAKATETHU HOUSE,
VETTUVENI, HARIPAD, ALAPPUZHA DISTRICT.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON 15/10/2007 PASSED THE FOLLOWING:

C.R

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Matrimonial Appeal No.357 of 2005

Dated this the 15th day of October 2007

JUDGMENT

Harun-Ul-Rashid,J

The appeal is filed by the husband who is the petitioner in O.P (HMA) No.699/2005 on the file of the Family court Alappuzha. The appellant has filed a petition under Section 13 of Hindu Marriage Act for dissolution of marriage on the ground of cruelty. The Family court after considering all the aspects in detail, found that the appellant has not succeeded in proving the matrimonial offence of cruelty against the respondent wife as envisaged under Section 13(1) (i-a) of the Hindu Marriage Act and thereby he is not entitled to get the relief of divorce as prayed for. Aggrieved by the impugned judgment the appellant-husband has filed the appeal seeking reversal of the judgment and decree. The parties before this Court are arrayed as petitioner and respondent as in the Original petition for the sake of convenience.

2. The parties to the Original petition are examined as PW1 and RW1 respectively. The petitioner produced Ext.A1 to A3 and the respondent produced Exts B1 to B18 in support of their pleadings and respective contentions.

3. The facts of the case in brief is as follows:

The petitioner-husband is an engineering graduate in Mechanical Engineering and was working as Senior Executive, customer Support in TATA Motors at Ernakulam and the respondent was doing her internship following her MBBS course in the Medical College Alappuzha at the time of marriage. The marriage between the petitioner and respondent was solemnized on 4-5-2003 as per the Hindu religious rites and ceremonies. The respondent completed the internship by the middle of July 2003. Thereafter the respondent got employment as a Doctor on ad hoc basis in the Taluk Hospital at Haripad which is her hometown. The petitioner- husband wanted the respondent to work in any private hospital at Ernakulam so that they can continue their joint residence at Ernakulam . But the respondent accepted the job in the Taluk hospital at Haripad. On completion of the employment at Haripad the respondent again got another engagement in the Primary Health Centre Karthikapally, According to the petitioner, the respondent insisted for the job at Haripad and nearby places when he wanted her to be employed in Ernakulam so that both parties can reside jointly. It is alleged by the petitioner that it is only at the instance of the respondent and her mother that he sent her for jobs at Haripad and Karthikapally. According to the petitioner after the respondent started to reside with her mother at Haripad she was not

caring her husband and was reluctant to contact the petitioner. The petitioner though tried to convince the respondent and her mother that it is better for their life to find a job at Ernakulam, the respondent and her mother were not amenable for the same. The petitioner further alleged that his wife informed him that her mother had made all other arrangements to start a clinic at their place of residence and a name board to that effect was also installed and therefore she started her permanent stay at her residence along with her mother. The petitioner strongly opposed the proposal and intimated her mother about the same. Then at the intervention of the respondent's relatives she reluctantly agreed to join the petitioner at Ernakulam and joined in the Lake Shore Hospital, Ernakulam on 6-10-2003. The petitioner and the respondent shifted their residence from their independent building in which they were residing to the upstair portion of a nearby house for safety reasons as the petitioner had to travel a lot as part of his job and he has to be away from the residence for two or three days continuously. According to the petitioner whenever he goes for a tour in connection with his job, the respondent used to leave the house without his permission and go to her residence at Haripad and stay with her mother. The petitioner's further complaint is that his wife is not taking care of him and not attending the day-to-day affairs of the house such as cooking washing etc. and she was reluctant to attend her job at the Lake Shore hospital. It is further alleged that the salary received by

the respondent -wife was sent to her mother without his consent and knowledge and she was very reluctant for physical relationship with the petitioner. Moreover the respondent and her mother insisted that the petitioner should leave his native place and to reside at Haripad with them. The petitioner also alleged that the respondent started to defame the petitioner and his parents and also used to spread unhealthy news about the petitioner to the house owner and to the staff members of his office that the petitioner is not allowing the respondent to continue her post graduate study. It is further alleged that without the permission of himself the respondent joined in a tuition centre for Entrance Examination at Kottayam The mediations and conciliations on several occasions by the involvement of the relatives of both the family did not make any change in the attitude and behaviour of the respondent. The respondent was reluctant to reside with the petitioner's parents, and to mingle with his only sister. The petitioner stated several instances of quarrelsome relationship between them. He further alleged that the miserable dealings and unhealthy character of the respondent spoiled his peace of mind and concentration even for attending his duties and that the attitude of the respondent made it difficult for him to continue a peaceful life with the respondent. Again there was mediation at the instance of the family members of both the parties and a decision was taken that the respondent should stay with petitioner's parents at least for two months to

learn how to carry on a peaceful family life . But that arrangement also did not last long and on 22-9-2004 the respondent left the matrimonial home. The petitioner took all the belongings of the respondent and handed over the same to her at her residence. According to the petitioner, the respondent had threatened the petitioner with dire consequences if he insists her to reside with his parents. He also narrated an incident alleging that the respondent got into the bedroom locked it from inside and shouted to the petitioner that she is going to cut the vein of her hand. It is also alleged that in another occasion the respondent threatened the petitioner that if he does not obey her demands, the petitioner will be put behind bars on the allegation of dowry offence. Thus the relationship has irretrievably broken and there is no chance for any reunion. The continuation of marital relationship with the respondent will ruin the life and prosperity of the petitioner and that her rebellious and vengeous attitude towards the petitioner without any reason had wounded his feelings deeply and that the sadistic and cruel attitude extended by the respondent- wife had reached the depth of the petitioner's heart and the wounds thus created due to cruel attitude of the respondent are not curable.

4. The respondent filed a detailed counter statement which had a different story to tell. According to the respondent the allegations levelled by the petitioner against her are not correct and are levelled by

suppressing true facts . The respondent -wife pleaded that the parents of the petitioner though pretended that they are not at all greedy for money, gold and other landed assets of the respondent before marriage, they regularly and incessantly intervened the private life of the petitioner and the respondent with demand of such matters and their life was turned upright down with some ulterior motives. The respondent further alleged that before betrothal, the parents of the petitioner told the parents of the respondent that they did not want anything except an educated girl like the respondent. But after the betrothal there is a vast change in the attitude of the petitioner's parents and they started demanding a car to the petitioner. It is stated by the respondent that though her parents were unable to raise money at that time, borrowed money and purchased a new Indica Diesel car, which was given to the petitioner on the date of marriage. Her parents also gave her 125 sovereigns of gold ornaments out of which 70 sovereigns were misused by the petitioner and his parents. It is also averred that the averments in the petition that most of the gold ornaments worn by the respondent were fake shows the conduct of the petitioner and the greedy nature of the petitioner and his parents. She further alleged that from the very next day of the marriage the parents of the petitioner compelled the respondent to hand over the gold ornaments for which the respondent was not amenable. The respondent also alleged that the petitioner acted as a puppet of his parents and he danced in

strict conformity to their tunes. It is also averred in the counter statement that the cruel dealings of the petitioner grew to such a level that the respondent had no other way to resign her government job at Haripad. On the resignation of the said job she had no other way to go but to accept a private job at Lake Shore hospital, Ernakulam.

5. The respondent further stated she had secured good academic record through out her studies, that she is one among the University top rank holders and that she was awarded as the best out going student . It is also stated by her that considering the noteworthy academic career of the respondent it was her dream to secure a Master Degree in medicine. Her dream was thwarted due to the deliberate obstructions from the side of the petitioner and his parents The parents of the petitioner became restless and abused the respondent and declared that they will not allow her to continue her study They wanted the respondent should work and earn money. To fulfil the ambition to go for higher studies, the respondent resigned her job at Lake shore hospital at Ernakulam for concentrating in the M.D. entrance examination . She further stated that though she worked for a very limited period of six months in the Lake shore hospital Ernakulam she was awarded the best Junior Doctorship. She has also narrated several instances and behaviour of the petitioner which according to her are nothing but cruel acts .

According to her it is the petitioner's parents who used to interfere with the marital life of them. It is stated in the counter statement that once the petitioner drove the car leaving the respondent alone, in the rented house in the night at 1 A.M, then the house owner feeling sympathy for her, allowed her to accommodate with them on that day . She also alleged that the petitioner's parents were doing their level best to make the relationship between the petitioner and respondent not at all cordial and that the mediation or conciliation talks were actually scenes created for insulting the respondent and her parents. She also alleged that the petitioner's sister openly declared that she will do her M.B.B.S and M.D.; so that she will get a supremacy over the respondent. According to the respondent the petitioner's sister with poor academic performance strained her every nerve to harass the respondent in one way or the other. The respondent further stated that she is least interested to go for a legal fight in an open court. Therefore she filed pre-litigation petition before the Lok Adalat organised by the Karthikapally Taluk Legal Services Committee and the Committee issued process to the petitioner and his parents. The petitioner's father appeared and argued that they are not ready for any compromise, but will get a divorce easily. Beacuse of the adamant attitude of the petitioner and his father the case was posted in the Mega Lok Adalath held at Kayamkulam. The respondent further alleged that though the Lok Adalaths tried their level best to effect a

reunion, it could not be materialised due to the adamant attitude of the petitioner and his father. Thereafter they filed application for anticipatory bail before High Court on the apprehension that the respondent will proceed with the case of dowry offence and they further filed a petition before this Court to quash the pre litigation petition. It is also alleged that the petitioner's father has made his son a guinnie pig by filing a petition and made the petitioner affixed his signature against his will by the persuasion of his parents. Petitioner is acting according to the direction of his father without maintaining any individuality

6. On a perusal of the pleadings of this case and some of the incidents narrated in the preceding paragraphs it is clear that the parties are fighting each other from the very beginning of their marital life. Both parties have shirked all their responsibilities and duties, as husband and wife and picked up quarrels everyday imputing allegations against each other. The conduct of both parties shows that they created problems in their marital life unmindful of the mental injury caused to each other. Both have not made even any attempt to make any adjustment to suit the other side. The parties are fully supported by their parents and in fact they are not bridging the gap between the relationship of the husband and wife. The parents of both sides are expected to advise their wards and to settle the disputes amicably; instead they supported them and acted

their own part to make the dispute worse and severe. The parties lived together for some period i.e only during the period from 4-5- 2003 to 20-9-2004. During this short period the parties had been deliberately creating problems against each other Both the parties were boosting even minute aspects occurred in day to day life and were finding fault with each other. It is admitted that so many conciliations and mediations were made during that period to settle the disputes between the parties. The parties by their own conduct aggravated the worsening of the situation. According to the appellant the respondent is unwilling to maintain good relationship with his parents and his only sister, that the respondent- wife had always shown a tendency to live and settle in her family house and to live with her mother which is at a distance of about 100 kilometers away from the native place of the petitioner- husband. The respondent- wife is all the more aggrieved by the alleged conduct of the husband and his parents in not supporting her and encouraging her in attending tuition centre for facilitating her to join for higher studies in medicine. Both sides continued to accuse each other and levelled allegations which have reached a high degree. One of the allegations raised by the wife against the husband is the denial of opportunity to attend the coaching classes for Entrance Examination. When the petitioner was examined as PW1 his allegation is that he was suggested to use condoms during the course of sexual relationship. It was explained by the respondent as RW1 that

both the petitioner and the respondent jointly decided to postpone the child birth for one year of the marriage. Another main allegation among many raised by the petitioner is that when they were returning to Ernakulam in the car driven by the petitioner the respondent turned steering so as to have a direct hit against a truck .

7. Senseless mental torture continued all through when the parties co-habited . Parents of both sides dictated terms to the other through their wards and both parties' behaviour was oppressive and intolerable . Both sides have been practising their cruel, inhuman mental torture methods on the other side making their life extremely intolerable, miserable. overbearing and cruel harassment reached intolerable proportions.

8. Tolerance, adjustments and respect to each other are totally absent in the relationship between the parties, which have created problems one after other. So the parties approached the Family court and other Forums.

9. Before this Court also the fight between the parties continued and reached its zenith. During the pendency of the appeal the petitioner-husband produced several documents which shows that complaint and other proceedings are initiated against the respondent, her mother and brother on a complaint lodged by brother's wife alleging torture by the

respondent and her parents and brother demanding dowry. The documents includes F.I.R., and F.I Statement, copy of the case diary, copy of the complaint by the sister-in-law of the respondent to the D.G.P and to the Kerala Women's Commission , copies of the orders passed by the Family Court Alappuzha, etc. This Court also summoned the parties on 9-7-2007 to thrash out the possibility of a settlement . The parties were referred to the Lok Adalath conducted by the High Court Legal Services Committee. The conciliation and mediation efforts of the retired High Court judges also did not yield any result. They have informed this Court that there is no chance of settlement between the parties and therefore the matter was again posted before this Court.

10. Allegations, counter allegations, accusations and counter accusations went on throughout the period when they were living together, a good part of the life of both the parties has been spent in rancour and litigation. It is said that marriages are made in heaven, , but this one has turned in to be a hell for sure. The allegations and counter allegations are indicative of the intense hatred and rancour between the parties. Any reconciliation is out of question. Each party it appears is out to punish the other for what the other is supposed to have said or done . This appears to be the single thought ruling their lives today. A good part of the life of both the parties has been consumed in the litigation and yet the

end is not in sight. Both have spoiled their very good part of life. . The lost periods are vital in shaping their career in the right path The parties have crossed the point of no return long ago. The nature of the allegations levelled against each other shows intense hatred and animosity each bears towards the other. The marital tie does not exist except in name. It is significant to note that in this case allegations are made not by one party against the other. Both have levelled serious allegations against each other.

11. Cruelty contemplated by the sub- clause (i-a) section 13 of the Hindu Marriage Act is both physical and mental We are concerned herein with the latter. The observations of Lord Pearce (at page 695 A11 ER P.992) quoted with approval by the Supreme Court in the decision reported in **V.Bhagat Vs. D.Bhagat (Mrs) (1994 (1) SCC 337)**is as follows:

> " *It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a resonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it. "*
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> *The particular circumstances of the home, the temperaments and emotions of both the parties and their status and their way of life, their past relationship and*

almost every circumstance that attends the act or conduct complained of may all be relevant"

12. Mental cruelty under Section 13 (1) (i-a) in its wider sense can be defined as that conduct each reflects upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words mental cruelty must be of such a nature that the parties cannot reasonably be excepted to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. While arriving at such conclusion regard must be had to the social status, educational level , professional level, mental conditions, customs and traditions of the parties, the society they move in, the possibility or otherwise of ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

13. If the cruelty is physical one it is easy for this Court to determine the fact of cruelty on the basis of evidence on record. If it is mental , first, the enquiry must begin as to nature of the cruel treatment,

the impact of such treatment on the mind of the spouse and whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

14. The Family court though dealt with the pleadings, evidence, accusations and counter accusations extensively, the mental agony which the parties suffered, held that the various circumstances proved by the petitioner -husband are not sufficient to attract the mental cruelty alleged against the respondent. The learned judge further observed that though such allegations might have wounded the petitioner and his parents, the Family further expected the parties would effect a reunion by changing their present attitude towards each other by showing tolerance, adjustment and mutual respect.

15. As we have noticed earlier the facts pleaded and proved by both sides shall have to be appreciated and evaluated differently from the facts appreciated by the judge of the Family court. We have examined the facts on the basis of the evidence on record as to whether the conduct of one party to the other inflicted mental pain and suffering as would make it not possible for that party to live with the other. We have analysed and

appreciated the particular circumstances at home, the temperaments and emotions of both the parties and their status and their way of life and other circumstances. We have also given regard to the social status, education level of the parties, the society they move in, the possibility or otherwise of the parties ever living together and considering all other relevant facts and circumstances we are of the view that the parties cannot normally be expected to live together.

16. We find that there are some extraordinary features to grant divorce on the basis of the pleadings and evidence. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground alleged is made out and in moulding the relief to be granted, the said circumstance can also be born in mind. It can be safely concluded that the marriage between the parties has broken down irretrievably and there is no chance of their living together again The parties to this case have inflicted upon the other party mental pain and suffering as would make it not possible for one party to live with the other. In the facts and circumstances, both parties due to their own conduct are entitled to a decree for divorce under Section 13 (1) (i-a) of the Act, since both have inflicted mental pain and suffering to the other. When either of the parties is entitled to get a decree for divorce, we are granting it at the instance

of the husband who is the petitioner in the Original petition. The Family court is not justified in dismissing the Original petition in the given facts and circumstances of the case. The incidents of which the appellant relied on to establish the charge of cruelty are grave and weighty.

17. In the result, we allow the appeal and set aside the judgment and decree of the Family court, Alappuzha in O.P (HMA) 699/2005. A decree is granted dissolving the marriage between the parties. No order as to costs.

sd/-

KURIAN JOSEPH, JUDGE

sd/-

HARUN-UL-RASHID, JUDGE

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